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CHARLES ELMORE CR
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Supreme Court of the United States

October Term, 1934.

No. 13.

DETROIT TRUST COMPANY, Trustee,
Petitioner,

against

Steamer "THOMAS BARLUM", her engines, etc.,
BARLUM STEAMSHIP COMPANY,
Respondent.

No. 14.

DETROIT TRUST COMPANY, Trustee,
Petitioner,

against

Steamer "JOHN J. BARLUM", her engines, etc.,
BARLUM STEAMSHIP COMPANY,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

RAY M. STANLEY,
ELLIS H. GIDLEY,
FERRIS D. STONE,
CLEVELAND THURBER,
Counsel for Petitioner.

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The mortgages in suit being concededly valid obligations, the use made of the proceeds is immaterial 2

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SUPPLEMENTAL BRIEF FOR PETITIONER.

Since our principal brief was printed the attention of counsel has been called to two cases which appear to be of sufficient importance to justify directing the attention of this Court to them.

The opinions in both cases were written by Mr. Justice Story in the first case cited while sitting in Circuit Court, in the second in this Court.

In the case of *The Draco*, 7 Federal Cases No. 4057 (2 Sumn. 157) the validity of a bottomry bond and the jurisdiction of the Court over an action *in rem* to enforce it were involved. The opinion reviews the law of the principal maritime nations of the world relating to bottomry bonds; details their essential characteristics, and compares them with mortgages in the following language:

> "* * * it being as clear, that it is for maritime risks, it follows, of course, that it is a maritime hypothecation, which, in legal contemplation, is neither more or less than a maritime mortgage."

The bond in question is printed in full in the report. A comparison with the mortgages and bonds here involved discloses no legal distinction.

In this case it was urged that the bond was invalid and the Court without jurisdiction because the moneys were not expended for the ship or the voyage. The claim was rejected; the court holding that if the bond was otherwise valid, the actual use of the moneys made no difference. The analogy is obvious.

In the case of *Conard v. The Atlantic Insurance Company of New York*, 1 Peters 386 (26 U. S.). A respondentia bond was involved and it was there urged that the bond was invalid because the ship had sailed before the bond was given and that the money was not appropriated to the purchase of the goods put on board. In disposing of the claims made this Court said:

> "In our opinion, neither of these objections can be sustained. It is not necessary, that a respondentia bond should be made before the departure

of the ship on the voyage, nor that the money loaned should be employed in the outfit of the vessel, or invested in the goods, on which the risk is run. It matters not at what time the loan is made, nor upon what goods the risk is taken. If the risk of the voyage be substantially and really taken; if the transaction be not a device to cover usury, gaming, or fraud; if the advance be in good faith for a maritime premium; it is no objection to it, that it was made after the voyage was commenced, nor that the money was appropriated to purposes wholly unconnected with the voyage."

Again, the analogy is obvious.

October 1st, 1934, Buffalo, New York.

Respectfully submitted,

RAY M. STANLEY,
ELLIS H. GIDLEY,
FERRIS D. STONE,
CLEVELAND THURBER,
Counsel for Petitioner,
Detroit Trust Company, Trustee.